

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
Teleconference
Business Meeting
February 25, 2008
Department of Environmental Quality
Last Chance Gulch Building Room 112, 1100 North Last Chance Gulch
Helena, MT

Board members in attendance by telephone were Theresa Blazicevich, Greg Cross, Karl Hertel, AJ King, Steve Michels, and Roger Noble. Also in attendance were Terry Wadsworth, Executive Director, and Pam Collins, Board attorney.

Presiding Officer Cross called the meeting to order at 10:04 a.m.

2009 Legislation

Mr. Wadsworth stated that the purpose of the meeting was to discuss the draft legislation provided to the Board members by email the previous week. The draft contained changes proposed by the work group that had convened on February 15, 2008.

He provided a summary of the changes proposed by the work group.

- 1) The co-pay has been revised to be 50% of the first \$50,000 and 5% of all remaining cost with a cap of \$1 Million, resulting in a potential cost to the Fund of \$924,500.
- 2) ASTs must be inspected in order to be eligible for Fund reimbursement with the revised co-pay schedule. The Fire Marshal has participated in the drafting of the Board's AST check list and has agreed to provide the training of inspectors. .
- 3) The maximum amount that will be covered by the fund has been revised as follows:
 - a) For USTs with a permit under, and in compliance with, §75-11-509, MCA, the cap will remain at \$1 Million.
 - b) ASTs that have received a satisfactory inspection will be covered to \$1 Million.
 - c) Heating oil tanks and all other tanks found to be in compliance will be capped at \$250,000, resulting in a cost to the Fund of \$215,000 per tank.
- 4) Language was drafted to address the matter of insurance. The intent was to allow any insurance the owner/operator has to be attributable towards their co-pay. This would provide a financial incentive to encourage owners and operators to purchase private insurance for pollution coverage for cleanup costs associated with new releases.
- 5) The housekeeping matters that were addressed were:
 - a) the fee increase of ¼ of a cent, or if that proposal will not succeed, transferring the administrative costs to the general fund. The transfer of administrative costs could apply to all administrative costs, or only those costs associated with the regulatory program.
 - b) specifying that, if there are co-mingled plumes, the cap that would apply to cost reimbursement would be the one associated with the plume with the highest cap.
 - c) Raising the ceiling of the Fund from \$8 Million to \$10 Million and raising the floor to \$6 Million.
 - d) "Found" tanks are given 90 days to obtain a permit to remove the tanks, rather than 30 days.
 - e) Add a definition of Above Ground Storage Tank (AST)
 - f) Amend the language of the statute to include any judicial action in that part of the statute that triggers reimbursement adjustment, not just an Administrative Order.

Members of the work group expressed concern that under the proposed legislation, if an owner/operator properly closes a tank, and contamination is discovered later, the tank would not have the \$1 Million coverage currently in place, because the reimbursement coverage will drop to \$250,000. Mr. Wadsworth stated that owners/operators need to understand that when they close a tank, they need to do a thorough job of investigating the site and removing as much contamination as possible. The owner/operator must also be sure to close the tank before his permit expires. In addition, an AST owner/operator needs to close an above ground tank before his inspection expires. Mr. Wadsworth has discussed this

with the UST Section, and they are working on a way to make sure an owner/operator retains his operating permit up through closure of the tank, allowing him to be covered up to \$1 Million, should a release be encountered.

The work group also saw a potential problem. Board's objective is to bring ASTs to compliance with today's standards, including spill and overfill protection, SPCC plans, and other important rules. However, the Fire Marshall's office only requires an AST to be up to the standards in place when the tank was installed. The intent is if a tank would be eligible under today's law, it would still be eligible under an amended law, but would have a different co-pay and reimbursement cap. Mr. Wadsworth asked how the Board wanted to accomplish that intent. One possibility is to provide a time window for ASTs to be upgraded.

There was a lengthy discussion concerning coverage of "found" or unknown tanks.

Ms. Blazicevich suggested taking subparagraph (b)(4) be taken out of the eligibility section. She believes that "found" tanks should not be eligible at this point. All the tanks should have been found by now. In the alternative, strengthen the language to require that the tank be unknown to the current owner, the Department and to previous owners. Some owners purposely did not notify the Department when required to in the 1980s. An owner who purposely hid the existence of tanks at the time of sale should be required to contribute to the cost of cleanup. She believes investigations should be conducted for ownership back to 1974 when DEQ should have been notified of the existence of tanks. She believes the Board should use the 1974 date. She wants the owner to provide documentation that the tanks were properly notified as required, or were not required to be notified.

Sandi Olsen, Division Administrator, told the Board that under the Brownfields statute, investigations are conducted to determine the previous two owners.

Mr. Noble prefers to keep the found tanks in the law. There are not many of them and they tend not to be very expensive.

Mr. Wadsworth reminded the Board that if a found tank is not in compliance when found, it is not eligible for the fund. He asked if the Board wanted to change the language in accordance with Ms. Blazicevich's suggestion.

Mr. Noble asked for clarification of the date to be used, and where that date came from. The RCRA regulations didn't come into effect until 1986 or 1987.

Ms. Blazicevich stated that the original notification form said if a tank had been in use after 1974, even if out of use in 1986, the owner was required to notify. She wants to reference the notification requirement from the original notification form. She also believes the terminology used in the original notification form should be used, because the terms "found" and "unknown" tank are too subjective. She was unsure how to deal with farm and residential and above ground storage tanks that were originally required to notify, then removed from Department regulation by the Legislature in 1995. After 1995 those tanks were no longer required to notify.

Mr. Wadsworth noted that under current draft language, a UST without an operating permit would not receive full coverage. Such tanks would be found to be out of compliance with the Board's requirements. However, tanks that are exempt from regulations, but eligible for the Fund would receive reduced coverage.

Ms. Olsen suggested that some language that addresses Ms. Blazicevich's concerns be drafted and brought to the next Board meeting.

Ms. Blazicevich suggested eliminating 75-11-308(1)(b)(iv) and putting in language that the tank had to be notified. Or perhaps add language to 75-11-308(1)(a).

Mr. Wadsworth asked if the Board wanted the staff to draft language to ensure a tank is not eligible unless it met the proper notification requirements.

Presiding Officer Cross stated that he would like to have the Board's attorney involved in the drafting to ensure that the language does not seriously limit the Board's discretionary powers. If it does not, the Board would probably not oppose the concept.

Mr. Wadsworth asked if there were any other areas of concern with the current proposal, besides the "found" tanks and adding judicial actions to the reimbursement adjustment triggers.

Presiding Officer Cross stated that the other matter of interest to the Board is mostly philosophical in nature and concerns placing some restrictive action on the spending side. Most comments he has received express the desire for the viability of the fund to be secure, but that expenditures are more carefully considered on the front end.

Mr. Noble moved that the Board staff and the Board continue progress in drafting the language for submission to the legislature. Ms. Blazicevich seconded. **The motion was unanimously approved.**

Mr. Wadsworth pledged to have a new draft of the proposed legislation available for the Board's review before the next Board meeting on March 31st. He will provide interim communications to the Board by email.

Ms. Olsen informed the Board that under the executive planning process, conceptual plans for legislation are due to the Governor's office by March 4, with draft language due in April. The Board has provided enough information for her and Mr. Wadsworth to provide a conceptual proposal by the deadline.

Public Forum

There were no comments from the public

The meeting adjourned at 12:24 p.m.

Greg Cross – Presiding Officer